

TESTIMONY OF PARRY AFTAB, ESQ.

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**UNITED STATES HOUSE SUBCOMMITTEE
on
Crime, Terrorism, Homeland Security, and Investigations**

“H.R. 707, The ‘Restoration of America’s Wire Act’”

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Thank you, Chairman Sensenbrenner, Ranking Member Jackson-Lee, Vice Chairman Gohmert, and Members of the Subcommittee for giving me the opportunity to testify today on this important topic.

Introductions:

My name is Parry Aftab. I am, among other things, an Internet privacy and security lawyer. I began my law practices as a Wall Street corporate associate. Later, after forming my own firm, I was credited with helping found the field of cyberlaw. I am relatively familiar with the substantive legal issues before this committee. And, in my legal capacity, I believe that the Office of Legal Counsel correctly interpreted the Wire Act in 2011. The 2011 interpretation finally conforms to both the legal rulings and the findings of Congress. The language is clear on its face and consistent with the historical laws of Congress that have preserved the rights of States to define gambling policy within their borders as most recently expressed in the Unlawful Internet Gambling Enforcement Act (“UIGEA”) in 2006, [U.S.C. §§ 5361–5367](#), long after the enactment of the Wire Act (see Section 5362 (10) (B) which excludes “intrastate transactions” from the definition of “unlawful internet gambling” for purposes of UIGEA).

But, while prepared to discuss the Wire Act and other related laws, I am primarily here because of my life’s mission – to help protect children and empower consumers and families online. For almost twenty-one years I have devoted a majority of my time to this mission.

WiredSafety and Its Work:

I am the Executive Director of Wired Safety, the first Internet safety and help group in the world (formed twenty years ago). Along with the thousands of volunteers from around the world, I am an unpaid volunteer. We donate our time to helping others online.

In my role as executive director, my job is to keep everyone, especially kids, safer online. At WiredSafety we are all unpaid volunteers who devote our time to helping people when things go wrong online. We fight cyberbullying and help put Internet sexual predators behind bars. (We run [stopcyberbullying.org](#).) We help protect vulnerable groups, such as cyberstalked women, people attacked online and those defrauded and victimized online. We help define best practices and confront the sites and apps that don’t adhere to them.

We are a well-respected group and our and my expertise have been tapped by governmental agencies, legislative bodies, both Republican and Democratic Whitehouses, the UN, UNESCO and others over the last two decades to help create a safer and more responsible digital world for everyone. We have testified before Congress and the US Senate on a range of issues, including radicalization of the Internet and terrorist recruitment programs for our kids, children’s privacy law and regulations, child sexual exploitation, cyberbullying and Internet regulation.

To help demonstrate the level of our expertise and the extent of our experience, I have included some of the appointments we have received and our collaborations over the years:

- WiredSafety served as one of the 29 members of the Harvard Berkman Center's Internet Safety Technology Task Force (the "ISTTF") which was commissioned to render a report to the state attorneys general on the safety of children online.
- I was also appointed to serve on the 24-member working group established by act of Congress (run by the NTIA) to render a report for Congress in June of 2010 on cybersafety issues impacting children.
- The UN, as well as the FTC and FCC have turned to us for advice and help.
- I have received both the FBI Director's Award and the Canadian RCMP's Child Recovery Award for work in child protection over the years.
- UNESCO named me to head up their Innocence in Danger program for the United States, addressing child sexual exploitation online.
- We train and assist law enforcement agencies to address and prevent child sexual exploitation and crimes against children from small sheriff's offices, to attorneys general offices to Homeland Security and the FBI and Interpol.
- The Girl Scouts of the USA turned to me to design their cybersafety program for all 2.2 million scouts.
- Liz Claiborne tapped our expertise for its "Love is Not Abuse" program on teen dating violence.
- And Facebook selected us as one of its five International Safety Advisory Board members.

Our Expertise with Online Gambling Risks:

WiredSafety has over the years identified a broad range of risks related to online gambling. When we seek to reduce these risks:

- We review age-gating technologies and practices to keep everyone off the online gambling sites and apps unless they can definitively prove that they are adults.
- We review how well policies and age-gating are policed and how quickly site regulators and operators can address any issues that rise.
- We look at scams and fraud perpetrated by the gamblers, to those perpetrated by the website operators. (Rigged games and collusion using old-fashioned and digital methods are common place among unregulated websites.)
- We look at payouts, money-laundering and banking fraud, as well as credential theft.
- We look at risks to problem gamblers when the websites don't adopt the latest tools and best practices to address problem gambling.
- We look at risks to our digital ecosystem, with malware, spyware and illegal digital codes designed to undermine our digital hygiene and security.

- We look to ways to protect children, teens and seniors from targeted schemes and fraud.
- And, we look to data protection methods, privacy, credential protection and security.

While all gambling is, by its nature, risky, unregulated gambling is the most risky. Absent regulation, consumers and families are on their own without regulations to handle underage gambling, addictive gambling, fraud, collusion, malware and malicious code, privacy and data protection, criminal involvement, disputes and online security threats. That is unacceptable.

We have not come late to this party. This isn't a new opinion by me or our charity. And unregulated online gambling isn't a recently discovered risk to children. I addressed it in the first book ever written for parents on online safety for children. In 1995 I wrote the chapter called "Are We Raising Riverboat Gamblers?" Twenty years ago, along with cyberbullying, sexual predation and illegal content online, we recognized that this was a serious risk that had to be addressed in the US.

Minors and online gambling has been on our radar since WiredSafety first began our work in 1995. Even then, kids were gambling online. Teens would use babysitting, paper-delivery and birthday money to place bets online. Teens themselves would contact us when the websites failed to pay out, or they suspected fraud. Parents and grandparents would contact us when they discovered their teens gambling online, or wanted help keeping them away from online gambling sites. We helped them when we could, reviewing filtering and blocking technologies, reaching out to the credit card companies and phone companies used as payment intermediaries and would sometimes even contact the sites themselves. But, largely, our hands were tied. There was no place for us or defrauded consumers to turn.

Over the years, online gambling abuse has become a mainstream consumer issue. Since it is WiredSafety's role to address problems affecting children and our consumer constituency online, unregulated and rogue online gambling operations and gambling apps are among the problems we must address.

Protecting Children, Families and Consumers:

Everyone on this subcommittee, on this panel and in this room wants to do what's best for our children and consumers. We all share WiredSafety's mission. We want our kids and consumers safe online and offline. We want the Internet to be secure. We want to protect consumer data and financial credentials from fraud and criminals. We want to avoid scams and con artists. We want to promote the rules of law and fairness. We want to make sure that minors are kept out of casinos and off Internet gambling sites. That's why we all recognize the need to do something to address the risks of illegal, unregulated online gambling.

It is ironic that a cybersafety charity would oppose the criminalization and recommend the legalization and strict regulation of online gambling. It is counter-intuitive at first glance. But as much as I understand and am sympathetic to the concerns of the sponsors of H.R. 707 and

others who would try to prohibit Internet gambling in the United States, I respectfully believe that while well-intended, these efforts are not well-founded. A far better approach to addressing the risks of illegal online gambling schemes is the licensing and strict regulation of online gambling in the US, coupled with effective technological safeguards and tools designed to protect American consumers, families and more vulnerable populations, such as problem gamblers.

Unfortunately, H.R. 707 and similar efforts would do precisely the opposite. The risks to our seniors, our kids, our security and our privacy would be increased by such measures. The stakes are too high to take such risks. We need to be thoughtful, instead, and craft effective and realistic methods of addressing these risks. We cannot any longer put our heads in the sand, and pretend that everything is fine. We have to own the issues and address them.

I have heard claims about our kids being more exposed to online gambling if sites are licensed and regulated in the US. I have heard claims about parents being up-at-arms. I have heard vacant arguments and seen expensive sites, campaigns and promotions targeting online gambling in the US. But, this is too important for claims. It's too important for glossy campaigns attempting to spread misinformation and hype. We shouldn't have to make unfounded claims, when we have proof that it works. We have evidence that the well-constructed regulation of online gambling, in fact, works around the world and is working effectively in the US.

Prior Testimony and Our 2009 Whitepaper Conclusions:

This is the third time I have testified before Congressional committees/subcommittees on this issue. I hoped that we had finally put it to rest. But I understand that legalizing and regulating online gambling to protect vulnerable groups and our children from unlicensed and rogue gambling sites is counter-intuitive. So, we need to look at the facts, not speculation.

In 2009, we commissioned a comprehensive study of the risks we had identified, existing and viable regulatory schemes and the ability of technology tools to address our top concerns. Would regulation of cyber-gambling work? Is there a way to address the most crucial cyber-risks under existing laws or using alternative methods? Is it practical? Will it improve the existing situation? What can be learned from other jurisdictions? How can we improve on existing approaches? Can risks be realistically mitigated? And if so, how much?

We asked Dr. Malcolm Sparrow, a professor at Harvard University's Kennedy School of Government, to be the study's lead investigator. A former deputy chief inspector with the British Police Services and a world renowned expert on approaches to regulatory policy and compliance, Dr. Sparrow reviewed the existing literature, evaluated current regulations and cutting-edge technologies, and interviewed regulators, researchers and public policy experts from around the world. Dr. Sparrow was supported by experts in technology and other relevant disciplines. (The paper can be downloaded and is linked to on the front page of Aftab.com.)

The Whitepaper we commissioned doesn't advocate for or against legalized Internet gambling. Instead, it examines and evaluates the different types and levels of consumer risks associated with existing, mostly unregulated Internet gambling against the risks associated with Internet gambling in a strictly-regulated environment.

Notwithstanding the then prohibitionist legal and regulatory approach, the study cites evidence that millions of U.S. residents gamble online through offshore gambling sites. Indeed, the report concludes that the net effect of the current approach is to push Internet gambling underground and offshore, out of the reach of U.S. courts and regulators and exposing American consumers to significant risks.

As Dr. Sparrow demonstrated, a prohibitionist regime offers no meaningful consumer protections and exposes consumers to a number of potential risks:

- gambling by minors;
- problem gambling;
- fraud by operators;
- fraud by players;
- organized crime;
- money laundering by players;
- money laundering by operators;
- violation of jurisdictional prohibitions;
- breaches of data confidentiality; and
- lack of site security.

A fundamental conclusion of the study is that the legalization and regulation of online gambling would offer significant improvements to consumer welfare and protections related to each and every risk factor. That is, if we are concerned about the potential problems with online gambling such as underage play and problem gambling, we should seek strict and intelligent regulation, coupled with technology – not by trying to completely ban the activity. For each of the risks Dr. Sparrow identified, the research identifies a set of regulatory methods and technologies that would provide appropriate risk management in a regulated online gambling environment.

The Experience in Nevada, New Jersey and Delaware – a New Survey:

In the six years since the study was prepared, the problems associated with illegal online gambling have matured, as have the solutions and real life experience at the state level in Nevada, Delaware and New Jersey.

Previously, we had no option but to look to international approaches and speculate about how those would work in the US. But now, we have almost 2 years of online gambling regulation and operations under our belts in Nevada, New Jersey and Delaware. We recently tested Professor Sparrow's conclusions about the effectiveness of the regulatory approach to online gambling by

surveying regulators in these three states. The verdict is in – with the exception of a handful of incidents which were quickly addressed, all stakeholders are safer and minors are being locked out of online gambling sites. It is much easier for them to get fake IDs and wander into a brick and mortar casino than get past the levels of age-gating used by online casinos. If you can't prove that you are an adult, the site is closed to you. Period.

The regulatory environments we surveyed effectively coordinate and cross-check various technologies and databases and have requirements for strict and independent regulation and audit that restrict participation in online gambling to adults only. To date, there have been only a handful of instances of underage gambling on regulated U.S. sites (3 in Nevada, none in Delaware and “a handful of isolated instances” in NJ). This experience is corroborated by a much longer track record from Europe indicating that technology, coupled with strict regulation, all but eliminates the threat of underage gambling.

Instances of underage gambling were in all instances but one, related to parental failure to secure their accounts. In the other case, it was the failure of a legally-aged older brother to secure his account. In each case, regulators worked with the licensed operators to resolve these issues.

Nevada, Delaware and New Jersey each mandate a series of rigorous player identification processes prior to establishing a new account to play, and verifying identity at time of play (log-in). These regulatory requirements and processes do, in fact, offer better safeguards against underage gambling than exist in the brick and mortar industry, given the fact that the identities of adults can be validated through real-time automated crosschecks of existing databases and other measures that are not utilized in brick and mortar gambling establishments.

The research also identified how in the regulated jurisdictions, age verification is part of a larger, multi-step “Know Your Customer” process that builds a secure profile of the prospective online gambling customer. Age verification, identity verification, and cross checking against databases of unwanted persons (for example, the Specially Designated Nationals list maintained by the Treasury Department) are components in an integrated process that provides, for operators and regulators alike, a comfort level that each prospective customer is who s/he say s/he is, is of legal age, is located in a jurisdiction where the activity is legal, is not an unwanted customer and is not otherwise barred from participation in regulated online gambling.

Furthermore, in regulated online gambling, regulators control the thresholds for accepting, rejecting, or requiring further information concerning age verification, and can impose additional requirements that can further mitigate/eliminate the risk of play by minors. Regulations establish requirements based on the levels of assurance that are necessary to allow a customer to gamble, thereby fine-tuning the balance between failing to detect an underage individual and rejecting a player who is of the legal age. In other words, regulatory requirements can “turn up the dial” with respect to unknown or suspicious entrants to a site, which has the effect of minimizing the potential harm if a customer falls into a grey area. If

anything, regulated online gambling sites will reject prospective customers if anything appears other than perfect, rather than allow an under-age user to register.

These results demonstrate the wisdom of Congress' response to Internet gambling and the standards set forth in the Unlawful Internet Gambling Enforcement Act ("UIGEA") of 2006. In UIGEA, Congress itself expressly defined the parameters of what was lawful and what was not with Internet gambling as applied to financial processing transactions.

In fact, Congress expressed its will in setting forth the strict technological standards for intrastate gambling by requiring (i) age and location verification requirements reasonably designed to block access to minors and persons located out of such State; and (ii) appropriate data security standards to prevent unauthorized access by any person whose age and current location has not been verified in accordance with such State's law or regulations. These standards, followed by New Jersey, Delaware and Nevada, have proven to work in practice and suggest that the prohibition as proposed in H.R. 707 is the wrong approach and policy as prohibition will simply lead to more unregulated sites for Americans to visit, without the protections regulation and technology can provide.

I will formalize and submit the full findings of our new survey to members of the Subcommittee. I would also encourage you as part of your deliberations to contact the regulators themselves, the operators of regulated Internet gambling websites in the United States, and the various technology companies that have partnered with the regulators and operators to deliver tools that enforce age limits on Internet gambling and that meet the many other statutory and regulatory requirements that have been established.

Conclusion:

In conclusion, let me say that over the years I remain convinced that the best approach to dealing with the risks associated with online gambling is developing and maintaining a strong regulatory regime that protects American families and consumers.

After more than two decades analyzing the risks posed by unregulated Internet gambling, I have reached the firm conclusion that the best way to protect families and consumers in connection with online gambling is regulating it, not prohibiting it. Laws attempting to prohibit Internet gambling haven't worked, will not work, and cannot work in today's digital commerce environment.

It's simple, if counter-intuitive. It is also be ironic. We are a cybersafety help group yet are appearing today to ask Congress not to criminalize Internet gambling. But we are in it for our consumers, families, seniors and kids. And that means we need to be realistic and adopt strong regulations and licensing schemes, education, effective best practices and the safeguards that digital technology can bring to the table. It means that we support problem gambling prevention programs and work with the problem gambling services community to design ways to limit, restrict access, and manage problem gambling in the digital space. It means we develop security measures to protect all of our personal information and data, and prevent scams and

fraud. And it means adoption of age-verification and age-gating technologies and protocols to ensure that only adults can access regulated gaming sites. Congress can play an important role in making sure states implement these measures, should the states adopt online gambling within their borders.

Today a vast majority of the United States finds itself in the unfortunate position of incurring all the social costs of online gambling while having no control over the gaming sites that serve U.S. residents. Several methods had been deployed unsuccessfully to attempt to close the US borders to online gambling. But while we have tried to make online gambling unavailable to US residents, we have failed abysmally.

- It is estimated that each year Americans spend approximately \$2.6 billion on Internet gambling on offshore gambling sites and apps, despite attempted prohibition.
- Minors and college age youth have access to unregulated Internet gambling sites today that provide no protections against underage gambling.
- More than six percent of high school age males reported monthly use of Internet gambling sites, according to the 2010 National Annenberg Survey of Youth.
- Monthly use of Internet gambling sites was at 16.0 percent for college age male youth.

According to Annenberg, "The dramatic increase in use of online gambling by college age male youth indicates that payment restrictions on such sites are no longer a barrier to young people..... Projected on a national basis, more than 400,000 male youth in the college age range (18 to 22) gamble for money at least once a week on the Internet, and over 1.7 million do so at least once a month."

Today, authorities from perspectives as diverse as child protection advocates, law enforcement officials (including the Fraternal Order of Police and the National Association of Police Chiefs), and problem gambling experts, maintain that continuing to drive Internet gambling underground is dangerous to consumers, and that regulation is a better approach if we're sincerely interested in reducing the risks associated with illegal Internet gambling.

Advocates for regulation rather than prohibition are informed by positive experiences in several states in the U.S., many provinces in Canada, and countries in Europe that have chosen the regulatory approach, coupled with requirements on the use of state-of-art technologies to reduce risks.

I fear that if H.R. 707 is successful, we will be back where we started— fighting the shadows of rogue and unregulated international gambling sites that don't answer to US laws or US regulators and leaving consumers and families exposed. America's states, which have traditionally regulated gambling within their borders, should retain the authority established in

existing federal law to take best demonstrated international practices on Internet gambling and adapt them to their own needs and constituencies.

Thank you again for the opportunity to testify and I look forward to your questions. I can be reached directly at parry@aftab.com.